



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Lee Brady
Banking Commissioner
Austin, Texas

Dear Mr. Brady:

Opinion Number 0-2890
Re: Political character of
the Brazos River Conserva-
tion and Reclamation
District and related
questions.

This will acknowledge receipt of your letter re-
questing the opinion of this department on four questions.
The material part of your letter reads as follows:

"The Brazos River Conservation and Reclama-
tion District, created as a governmental agency,
a municipality, body politic and corporate, under
an Act of the Forty-first Legislature, Second
Called Session, has issued bonds pursuant to the
laws regulating such district, and both State and
National banks are investing in these bonds, and
it has now become necessary to determine what
restrictions have been placed by law on these
bonds as bank investments."

We must assume that you have reference to the \$3,000,-
000 issue of bonds authorized by the Board of Directors of the
Brazos District and which are secured by and payable out of
the State taxes granted to the district by the law creating
same.

Our opinion is requested on the following four
questions:

1. "Is said district a municipal corporation or a district created for school or any other state or local purpose, within the exception to Article 554 of the Penal Code of Texas, as amended?"

2. "Does this district have the sovereign power of taxation, or power of taxation derived from the sovereign, including the incidental power to compel payment?"

3. "Is the State of Texas liable on these bonds?"

4. "Are bonds issued by said district within the loan limit provided under Section 5136, U. S. R. S.?"

We shall answer the questions in the order above set out.

Relative to your first question, Article 554 of the Penal Code of Texas, as amended, Vernon's Annotated Civil Statutes, reads, in part, as follows:

"No incorporated bank or trust company, chartered under the laws of this State, shall loan its money directly or indirectly or permit any individual, private corporation, company or firm, to become, at any time, indebted or liable to it in a sum exceeding twenty-five per cent (25%) of its capital stock actually paid in and surplus * * *. Provided, however, that the word 'corporation' or any other word or term as hereinabove used, shall not be taken to include or to refer to a municipal corporation, county or any district created for school or any other State or local public purpose."

We think there can be no question but that the obligor on a municipal bond is a debtor in the sense contemplated by the above quoted article, and that, therefore, in the absence of the proviso underscored in the above quoted Act, the

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restriction thereof would apply to the purchase of municipal bonds as an investment by any bank so chartered. It seems clear that the above underscored proviso removes the restriction and would permit of unlimited investment in municipal bonds; provided, of course, that the issuing political subdivision comes within the meaning of the phrase "municipal corporation, county or any district created for school or any other State or local public purpose". The Brazos River Conservation and Reclamation District was created by an Act of the Second Called Session, Forty-first Legislature, compiled as Chapter 13 - Section 2 thereof reading, in part, as follows:

"The Brazos River Conservation and Reclamation District is created as a governmental agency, a municipality, body politic and corporate, vested with all the authority as such under the Constitution and laws of the State; it shall have and be recognized to exercise all of the powers of such governmental agency and body politic and corporate, as are expressly authorized by the provisions of the Constitution, Section 59 of Article 16 * * *; and shall have and be recognized to exercise all the rights and powers of an independent governmental agency, municipality, body politic and corporate, to formulate any and all plans deemed essential to the operation of the district * * *".

We think that Section 1 of this Act, hereinafter quoted, will sufficiently attest to the fact that said district is organized for a State purpose. Section 1, reads, in part, as follows:

"It being declared by constitutional provision the policy of the State of Texas to provide for the conservation and development of all the natural resources of the State * * * and the preservation and conservation of all such natural resources, are each and all hereby declared policy rights and duties which may be effected through

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the creation within the State or the division of the State into such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of the policy expressed in the Constitution of the State * * * and functions as may be conferred by law, there is hereby created the Brazos River Conservation and Reclamation District."

In the case of Brazos River Conservation and Reclamation District vs. McCraw, 91 S. W. (2d) 65, the Supreme Court in an exhaustive opinion upheld the validity of the Act creating the district, as well as the bonds issued pursuant thereto, which bonds are secured by a pledge of State taxes donated by such Act. In referring to the origin and purpose of this type district, the Supreme Court said that it was basically a public enterprise, created by the Legislature for the general governmental purpose of effectuating the object of the conservation amendment to the Constitution.

We, therefore, conclude, in answer to your first question, that the Brazos River District is a "district created for * * * State public purpose" within the exception to Article 554 of the Penal Code of Texas, as amended.

Answering your second question, we advise that in our opinion the power of taxation has been conferred upon the Brazos River Conservation and Reclamation District, and that such power includes the incidental power to compel payment of such taxes. However, as will be noted from a reading of the Act creating the district, the power to levy taxes cannot be exercised until such proposition shall have been submitted to the qualified property taxpaying voters of the district and approved by a majority of such electors voting thereon. Section 10 of the Act creating the district, reads as follows:

"The Brazos River Conservation and Reclamation District shall not be authorized to issue bonds, nor incur any form of continuing obligation or indebtedness for purposes of effecting improvements comprehended in the plan of organization and administration of the district, nor incur any indebtedness in the

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form of a continuing charge upon lands or properties within the district unless such proposition shall have been submitted to the qualified property taxpaying voters of the district and approved by a majority of such electors voting thereon."

Section 4 of Chapter 19 of the Acts of the Regular Session, Forty-fourth Legislature, amending Section 9 of Chapter 13 of the Second Called Session of the Forty-first Legislature, reads, in part, as follows:

"This district shall have the power to provide and maintain improvements for the common benefit of said district as a whole, subject only in appropriate cases to the constitutional and statutory provisions concerning a vote by the qualified electors of the district".

We think that from a reading of the foregoing it must be concluded that the Legislature has conferred upon the district the power of taxation, subject, of course, to the approval thereof by a majority of the qualified electors voting at an election called for that purpose, and that such power of taxation includes the incidental power to compel the payment of taxes levied.

In reply to your third question, we advise that it should be answered in the negative. In the Brazos River Conservation and Reclamation District case, *supra*, the question was raised that the Act creating the district constituted an attempt to authorize the Board of the district to create a debt in behalf of the State, or lend the credit of the State in violation of the inhibitory provisions of Sections 49 and 50 of Article 3 of the Constitution. The Supreme Court stated tersely —

"No debt on the part of the State is to be created, nor is the State credit loaned for that purpose. These questions are foreclosed in the opinion of this court in the case of *City of Aransas Pass vs. Keeling*, 247 S. W. 818."

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With reference to the fourth question, above quoted, we conclude that to answer same would place us in the position of advising as to the law governing National Banking Associations, which is beyond our proper sphere. Therefore, we do not answer the question.

Trusting that the foregoing is satisfactory, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Clarence E. Crowe*
Clarence E. Crowe
Assistant

CEC-s

APPROVED DEC 18, 1940

Guertl. Mann
ATTORNEY GENERAL OF TEXAS

